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Maine Labor Relations Board Rules and Procedures 2001

Maine Labor Relations Board

Maine Department of Labor

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STATE OF MAINE

MAINE LABOR RELATIONS BOARD



RULES AND PROCEDURES

Chapter 10.	General Rules
Chapter 11.	Bargaining Unit Composition and Representation Matters
Chapter 12.	Prohibited Practice Complaints; Interpretive Rulings
Chapter 13.	Resolution of Contract Negotiations Disputes

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CHAPTER 10. GENERAL RULES

SUMMARY: This chapter defines certain terms used throughout the rules of the Maine Labor Relations Board and contains other rules of general application.

- § 1. **Effective Date.** The rules of the Maine Labor Relations Board (Board) contained in Chapters 10 through 13 are effective as of January 1, 2001. All actions pending as of that date are subject to these rules.
- § 2. **Applicability.** The Board's rules apply to employers, employees, employee organizations or bargaining agents as defined in the Municipal Public Employees Labor Relations Law, 26 M.R.S.A. §962, the State Employees Labor Relations Act, 26 M.R.S.A. §979-C, the University of Maine System Labor Relations Act, 26 M.R.S.A. §1027, the Judicial Employees Labor Relations Act, 26 M.R.S.A. §1284, or the Agricultural Employees Labor Relations Act, 26 M.R.S.A. §1322.
- § 3. **Fees and Expenses.** The parties are required to share the costs of the Board members' per diem and expenses for hearings held on Prohibited Practice Complaints, Interpretive Rulings, and appeals of unit matters or appeals of election matters. No fees are required for costs related to prehearing conferences, unit composition hearings or election procedures.
- § 4. **Executive Director.** Whenever a rule refers to the executive director, the action or responsibility may be delegated to the executive director's designee.
- § 5. **Definition of Working Days.** "Working days" means those days when State offices in Augusta are open for business.
- § 6. **Computation of Time Periods.** In computing any period of time prescribed or allowed by these rules or by any applicable statute,

the day of the act or event after which the designated period of time begins to run is not included. The last day of the period is included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday, or a legal holiday.

- § 7. **Filing.** Filing of a submission or paper with the Board is considered complete on the date it is received by mail or in-hand delivery by the Board at its offices in Augusta.
- § 8. **Certificate of Service.** Except in the case of service of a prohibited practice complaint or an amended complaint, whenever a rule requires that a party serve a copy of a document on another party, the serving party may demonstrate compliance with the requirement of service by submitting to the Board a signed statement certifying service. The statement should include a written declaration of the names and addresses of the parties served and the date and manner of service. The following is an example of a statement certifying service: "I, _____, certify that on _____, I served a copy of this document on _____(name of party) by mailing/hand delivery/delivery via _____ delivery service (indicate which method), at the following address:_____." Proof of service such as a certified mail return card is not required but will satisfy this requirement.
- § 9. **Official Transcripts.** Unless excused by the Board, the Board's hearings reporter shall record all hearings. If proceedings are reported but not transcribed, the parties may make arrangements with the reporter to order a copy of the transcript, provided, however, that a copy of the transcript must be supplied to the Board without cost. If the Board causes the proceedings to be transcribed, the reporter producing the transcript shall make copies available to the parties to the proceeding upon request and prompt tender of the appropriate fee. Requests for transcripts must be made to the reporter. The Board's copy of the transcript is available for inspection, but not copying, by the parties. Transcripts prepared at the directive of the Board or its executive

director are the official transcripts of the Board proceeding. A party to a Board hearing seeking to have the hearing transcribed may, with prior approval of the Board, make arrangements for transcription by a qualified court reporter. If such arrangements are made and a transcript is produced, a copy must be furnished to the Board without cost and to the other parties upon request and tender of the appropriate fee. A transcript prepared at the request of a party may, at the discretion of the Board, be reviewed by the Board's hearing reporter for accuracy and, if approved by the Board, deemed the official transcript.

- § 10. **Enlargement of Time Periods.** When an act must be done within a specified time period and, prior to the expiration of that period the Board receives a request for enlargement of that time, the Board may in its discretion with or without motion or notice enlarge that time period for good cause shown. Upon motion made after the expiration of the specified period, the Board may extend the period where the failure to act was the result of excusable neglect.

NOTE: Many of the provisions of this chapter had been part of Chapter 7 of the MLRB Rules, which was repealed on the same day this chapter became effective.

CHAPTER 11. BARGAINING UNIT COMPOSITION AND REPRESENTATION MATTERS

SUMMARY: This chapter contains rules concerning petitions to create, modify, or merge bargaining units, petitions to hold bargaining agent elections, hearings on unit composition issues, procedures for bargaining agent certification and decertification, and appeals on representation matters.

REPRESENTATION PETITIONS: PETITIONS TO CREATE OR MODIFY BARGAINING UNITS AND PETITIONS TO HOLD BARGAINING AGENT ELECTIONS

§ 1. Types of Representation Petitions. Petitions are used to request Maine Labor Relations Board (Board) proceedings to create or modify a bargaining unit or to conduct a bargaining agent election. The following are the different types of representation petitions used at the Board.

- 1. Unit Determination Petition.** When there is a disagreement on the categories of jobs to be included in a bargaining unit, a petition for Unit Determination should be filed with the Board in which the petitioner proposes an appropriate bargaining unit. A Unit Determination petition is also used when the goal is to sever a group of positions from an existing unit to create a new separate unit or to expand an existing unit by adding a new group of jobs.
- 2. Election Petition.** An election petition is necessary for a bargaining agent election, a decertification election, or a combined election to decertify the incumbent and certify a new bargaining agent.
- 3. Unit Clarification.** A unit clarification petition is used when either the employer or the incumbent bargaining

agent wishes to modify an existing bargaining unit. A unit clarification petition is the only way to modify the composition of a unit during the term of a collective bargaining agreement, absent agreement of the parties.

4. **Merger Petition.** A petition for a merger election is used when two bargaining units that are represented by the same bargaining agent want to combine to form a single bargaining unit.
5. **Petition to Intervene.** A petition to intervene is appropriate when a third party wishes to become a party in a unit determination hearing or a bargaining agent election or decertification.
6. **Petition to contest exclusionary designation.** A petition to contest exclusionary designation may be filed by an individual who has been excluded from collective bargaining because his or her position does not fit within the statute's definition of covered employee.

§ 2. **Petitions Are Necessary When Parties Disagree.** Petitions are necessary when the parties are unable to agree on the composition of the bargaining unit or on the designation of the bargaining agent.

§ 3. **When Parties Agree, Petitions Are Not Necessary.** Petitions are not necessary when the parties have agreed on the composition of the bargaining unit or when the employer has agreed to voluntarily recognize the bargaining agent.

1. **Agreement on Bargaining Unit.** When the parties agree that certain categories of jobs constitute an appropriate unit, the parties shall sign an Agreement on Appropriate Bargaining Unit form (MLRB Form 1) and file it with the Board. The unit agreed to in a properly-filed MLRB Form 1 may not be challenged by either party for a period

of one year from the date of filing with the Board. The MLRB Form 1 may be modified or withdrawn by agreement of the parties at any time, as long as there is no pending question concerning representation. An MLRB Form 1 submitted to modify a unit should indicate that nature of the modification.

2. **Voluntary Recognition of Bargaining Agent.** When the parties agree that a prospective bargaining agent represents the majority of employees in an established bargaining unit, they shall file a Voluntary Recognition Form (MLRB Form 3) with the Board. The voluntary recognition may not be challenged for one year from the completion of the posting period required by the executive director under Rule 15 of this Chapter.

3. **Notice to Employees of Agreement or Recognition.** Once a voluntary recognition form or an agreement on appropriate bargaining unit has been properly filed, the executive director shall issue Notices to Employees of the filing. The notices must advise employees of the unit agreement or voluntary recognition, generally describe the rights of employees and explain the legal effect of the filing. The notices must be distributed or posted by the employer in accordance with Rule 15 of this Chapter.

§ 4. **Petitions Are Formal Requests for Board Action.** Petitions are formal requests for Board action. All petitions must be in writing, signed before a notary public and must contain a declaration by the petitioner or the petitioner's representative under penalty of perjury that its contents are true and correct to the best of the declarant's information and belief.

§ 5. **Who May File Petitions.** Generally, a petition may be filed by any public employer or any public employee, group of public employees, or public employee organization representing the

employees, whether or not formally organized. The specific limitations on who may file petitions are listed below.

1. **Unit Determination Petitions.** A unit determination petition may be filed by an employer, an employee, a group of employees or any individual or employee organization acting on their behalf.
2. **Bargaining Agent Election Petitions.** A bargaining agent election petition may be filed by an employer, an employee, or a group of employees or any individual or employee organization acting on their behalf.
3. **Decertification Election.** A decertification election petition or a petition to decertify the incumbent bargaining agent and elect a new bargaining agent may be filed by an employee, a group of employees or any individual or employee organization acting on their behalf. Neither the employer nor the incumbent bargaining agent may file a decertification petition or cause a decertification petition to be filed.
4. **Unit Clarification Petition.** A unit clarification petition may be filed only by the incumbent certified or recognized bargaining agent or the employer.
5. **Petition for Merger Election.** A petition for merger election may be filed only by the employer or the incumbent bargaining agent.
6. **Petition to Intervene.** A petition to intervene may be filed by an organization seeking to intervene in a unit determination proceeding, a bargaining agent election or a decertification election.
7. **Petition to Contest Designation as Excluded Employee.** Any employee who desires to contest the

appropriateness of an exclusionary designation which would operate or has operated to exclude that employee from the coverage of an otherwise applicable Labor Relations Act may seek a determination on the appropriateness of that exclusion by filing a unit determination petition.

§ 6. When to File Petitions. The following time restrictions apply to the filing of petitions with the Board.

1. **Contract Bar.** If a valid collective bargaining agreement is in effect which covers any or all of the employees or positions included in the petition, the unit determination petition, election petition or decertification petition must be filed in the window period beginning 90 and ending 60 days prior to the expiration date of that contract. A petition filed more than 90 days or less than 60 days prior to the expiration of the contract will be dismissed. Representation proceedings properly initiated by filings during the window period may be processed at any time after the filing regardless of the existence of a collective bargaining agreement. If there is no collective bargaining agreement in effect or the collective bargaining agreement has expired and a successor agreement has not become effective, a unit determination petition, an election petition or a decertification petition may be filed at any time. This contract bar rule does not apply to unit clarification petitions or merger petitions.
2. **Certification Bar.** No question concerning representation may be raised within one year of a voluntary recognition, certification by election or attempted certification. An election in which the incumbent bargaining agent is decertified and in which no other prospective bargaining agent appeared on the ballot is not considered a certification or attempted certification within the meaning of this rule.

3. **Limitation on Unit Clarification Petitions.** A unit clarification petition may be filed only by the employer or the incumbent certified or recognized bargaining agent. A unit clarification petition is not appropriate unless the circumstances surrounding the formation of an existing bargaining unit are alleged to have changed sufficiently to warrant modification in the composition of the bargaining unit, the parties are unable to agree on appropriate modifications and there is no question concerning representation. Unit clarification petitions may be denied if the question raised should properly be settled through the election process, or the petition requests the clarification of unit placement questions which could have been but were not raised prior to the conclusion of negotiations which resulted in an agreement containing a bargaining unit description. Unit clarification petitions must not be filed with such frequency as to constitute harassment.

§ 7. **Contents of Petition.** The original and one copy of the petition must be filed with the Board. Petition forms are available from the Board. The petition must contain:

1. **Petitioner's Name.** The name, address and telephone number of the petitioner and any representative for correspondence other than the petitioner.
2. **Employer's Name.** The name and address of the employer of the affected employees and the name, address and phone number of a representative of the employer authorized to receive notices or requests for information, if known by the petitioner.
3. **Bargaining Unit Description.** A description of the existing collective bargaining unit or the unit claimed to be appropriate and the estimated total number of employees in that unit. The description must include the

job classifications of employees included in or excluded from the existing or proposed unit and an estimate of the number of employees in each included classification. If less than all positions in any specific job classification are proposed to be included or excluded from the unit, the description must include a listing of the positions to be included and excluded.

4. **Collective Bargaining Agreement.** A copy of the current or most recent collective bargaining agreement covering the bargaining unit, if any.
5. **Name of Employee Organizations.** The names, addresses and telephone numbers of any employee or employee organization other than the petitioner claiming to represent any of the employees in the proposed unit and a copy of each written agreement covering any employee in that unit.
6. **Name of Proposed Bargaining Agent.** The name of the prospective bargaining agent as it will appear on the ballot, if election is requested.
7. **Other facts.** Any other facts relevant to the petition.
8. **Remedy Sought.** A statement of the action or remedy sought from the Board.
9. **Employer Petition.** A petition for unit determination or bargaining agent election submitted by the employer must include a statement that one or more employees or employee organizations have presented to it a claim to be recognized as the representatives in a bargaining unit.
10. **Agreement Attempted.** A petition for unit determination submitted by either the employer or an employee or an employee organization must state that the parties are unable to agree on an appropriate bargaining unit.

11. **Showing of Interest.** A petition for unit determination, bargaining agent election, or decertification submitted by an employee or employee organization must be accompanied by showing of interest forms from 30% of the employees in the proposed or existing bargaining unit. If both a unit determination and a bargaining agent election are sought, the same showing of interest forms may be used for both purposes.
 12. **Unit Clarification Petition.** A unit clarification petition must include a listing of the job classifications to be added or removed from the unit and an allegation that since the formation of the unit the circumstances have changed enough to warrant modification of the unit. The petition must also include a brief description of the nature of the changed circumstances and a statement that the parties are unable to agree on modifications. Showing of interest forms are not necessary for unit clarification petitions.
 13. **Petition to Contest Designation as Excluded Employee.** A petition to contest designation as an excluded employee must include items specified in numbers 1, 2, 4, and 5 above and must include a statement of the specific facts upon which the dispute regarding the exclusion is based. No showing of interest is required.
- § 8. **Showing of Interest.** The required showing of interest forms that accompany a petition for unit determination, bargaining agent election or decertification must be submitted to the Board only. The Board will determine the adequacy of the showing of interest based upon the estimated number of employees in the proposed unit. The showing of interest forms must comply with the following requirements.

1. **Form of Evidence.** The showing of interest must consist of original separate documents, with a separate document being signed by each individual prospective unit employee who supports creation of the bargaining unit or representation, and may be in the form of effective membership or authorization cards or statements. Any form of evidence filed with the Board pursuant to this rule must contain, as a minimum, (i) the signature of the employee, (ii) the typewritten or printed name of the employee, (iii) a handwritten indication of the date the employee's signature was obtained, and (iv) a statement that the person signing desires to be represented by the petitioner for the purposes of collective bargaining. Any signature which is undated or which shows that it was obtained more than six months prior to the filing of the showing of interest with the Board is invalid for the purposes of calculating the showing of interest. Sample showing of interest forms are available from the Board.
 2. **Acceptance of Evidence.** The executive director shall make the determination administratively on whether the showing of interest evidence is satisfactory in form or quantity. That determination is subject to review only by the Board, on the basis that specific portions of the showing were obtained by collusion, coercion, forgery, intimidation, fraud or misrepresentation, or are otherwise invalid.
- § 9. **Review, Amendment and Action on Petition.** The executive director shall review the petition for sufficiency upon filing with the Board and take action in accordance with this rule.
1. **Grounds for Dismissal.** The executive director shall dismiss a petition if it is not filed and adequate showing of interest forms are not submitted within the time periods specified by Rule 6 of this Chapter.

2. **Order to Show Cause.** At the executive director's discretion, the executive director may offer a party the opportunity to show cause why the petition should not be dismissed prior to dismissing the petition.
 3. **Permitted Amendments.** If the petition is filed in a timely manner but is not complete, the executive director shall serve on the petitioner a notice of errors and insufficiencies in the petition and shall provide a copy of that notice to the respondent. Amendments to petitions must be made within fifteen calendar days of service of the notice of insufficiencies. Permitted amendments are effective as if made on the date the petition was filed.
 4. **Dismissal, Appeal.** Insufficient petitions which are not amended during the time period specified in paragraph 2 must be summarily dismissed by the executive director, subject to appeal to the Board under Rule 30 of this Chapter. The notice of appeal must state with specificity the grounds upon which the request for review is based. The Board shall review the appropriateness of the summary dismissal as a matter of law and may also permit evidence of a party's excusable neglect regarding failure to amend. The Board shall allow oral argument upon request and may require that the parties file briefs.
 5. **Notification of Parties.** If the petition is complete, the executive director shall transmit an official copy of the petition to the respondent within 24 hours with a letter indicating whether a response is required. If that transmission is made by electronic means, it must be followed by a copy sent by mail.
- § 10. **Posting of Petition at MLRB Offices and on Internet.** The Board shall maintain an official bulletin board upon which the executive director shall post a true copy of each properly filed petition and indicate on that copy the date of posting. Insufficient

petitions are not posted; amended petitions must be posted on the day the curative amendment is granted. The purpose of the posting is to inform the public of the filing of the petition. The posted petition may not be removed until either the election is held, the unit has been agreed upon by the parties, a unit determination hearing has been conducted, or the petition has been withdrawn. The Board shall also publish notice of the filing of the petition or a copy of the petition itself on the Board's internet site.

- § 11. **Response to Unit Determination Petition.** A written response to a unit determination petition must be filed with the Board within 15 calendar days of the date the Board provided the respondent with a copy of the petition. The response must indicate whether the respondent agrees that the unit proposed by the petitioner is appropriate and the basis of any objection. A copy of the response must be simultaneously served on the petitioner and any other respondents. If no response is filed by a respondent within the 15-day response period, or within an extension of time allowed by the executive director, the respondent will be deemed to have agreed to the appropriateness of the unit as proposed by the petitioner.
1. **Challenge to Showing of Interest.** If the employer wishes to challenge the showing of interest, the employer must include with its response an alphabetized list of all employees in the classifications specified by the petitioner for inclusion in any proposed unit. The alphabetized list must indicate the job classification of each employee. If the employer fails to provide the list, the Board will determine the adequacy of the showing of interest based upon the petitioner's estimated number of employees in the proposed unit. If the employer challenges the authenticity of the signatures, copies of the employees' signatures must be provided for comparison by the Board.

2. **Disagreement on Appropriateness of Unit.** If the respondent disagrees with any proposed unit, the response must include a detailed description of the unit which it considers to be appropriate. The respondent shall estimate the total number of employees in that unit, state the classifications of employees sought to be included in and excluded from the unit, and estimate the number of employees in each classification.
 3. **Exclusions Claimed.** If less than all positions in any specific classification are proposed by the respondent to be included in or excluded from the unit, the response must contain a listing and description of the positions to be included and excluded together with the statutory basis for each proposed inclusion and exclusion.
- § 12. **Response to Unit Clarification Petition.** A written response to a unit clarification petition must be filed with the Board within 15 calendar days of the date the Board provided the respondent with a copy of the petition. The respondent shall file with the Board a written response indicating whether it agrees with the modification proposed in the petition and the basis of any objection. A copy of the response must be simultaneously served on the petitioner. If no response is filed by a respondent within the 15-day response period, or within an extension of time allowed by the executive director, the respondent will be deemed to have agreed to the modification.
- § 13. **Response to Election Petition or Decertification Petition.** A party wishing to object to the filing of a bargaining agent election petition or a decertification election petition must do so within 5 working days of the date the Board provided an official copy of the petition to the respondent. If no response is filed by a respondent within the 5-day response period, the election will be scheduled. The permissible objections are limited to the following:

1. **Objection to Timeliness of Filing.** A party may object to the petition on the basis that the executive director incorrectly determined that the petition was filed within the time frames established by Rule 6 of this Chapter. A party making such an objection must submit evidence supporting a reversal of the initial finding, such as a copy of an applicable collective bargaining agreement.
2. **Objection to Showing of Interest.** A party may object to the petition based upon a good faith doubt of the sufficiency of the showing of interest submitted. Any party making such an objection shall file with the objection an alphabetized list of the employees in the bargaining unit. The executive director will verify the contents of the list with the employer if it was submitted by a party other than the employer. If a party challenges the authenticity of the signatures, copies of the employees' signatures must be provided by the employer for comparison by the Board.
3. **Objection to Continued Appropriateness of the Bargaining Unit.** If there has not been any collective bargaining activity in the bargaining unit for five or more years, that is, there has been no contract in effect for over five years and no negotiation sessions or attempts to negotiate have occurred, the employer may respond to an election petition by objecting to the continued appropriateness of the bargaining unit and requesting a unit determination hearing. If the bargaining unit has been inactive for less than five years and is unrepresented at the time the petition is filed, the employer may respond by objecting to the appropriateness of the bargaining unit only if the employer alleges that there has been a substantial change in the circumstances since the expiration of the last collective bargaining agreement that warrants modification of the unit. The employer's response must include a description of the changed

circumstances affecting the continued appropriateness of the bargaining unit and a description of the unit it considers appropriate.

§ 14. Notices of Hearing and Notices of Election. Once a response is received or the period for filing a response has expired, the executive director shall schedule an election or a unit hearing, if a hearing is necessary to resolve the dispute. The executive director shall issue Notices to employees and distribute them as provided by this rule.

- 1. Notice of Hearing.** When a unit determination hearing or other type of representation hearing is scheduled, the executive director shall prepare a Notice of Hearing for delivery to the parties and posting by the employer. The Notice must advise employees that a petition was filed and must include a statement of the time, place and nature of the hearing, the names of the parties as determined by the executive director, and a statement of the unit claimed to be appropriate by the petitioner, by the employer and by any intervenor(s). The Notice must generally describe the method by which the matter will be resolved, the rights of employees and the opportunity for employees to participate in the proceeding.
- 2. Notice of Election.** When a bargaining agent election or decertification election is scheduled, the executive director shall prepare a Notice of Election for posting by the employer that contains the information required by Rule 44 of this Chapter. The notices must advise employees of the pendency of the bargaining agent election petition and the period within which intervention petitions may be filed, and generally inform employees of their rights.

§ 15. Posting of Notices by Employer. Whenever the executive director prepares a notice under this Chapter, the executive

director shall administratively determine whether the employer shall post the notices or forward them to all affected employees by postpaid first class mail or by other acceptable means. The executive director shall specify the place(s) and period(s) of posting, and the manner of determining the date of its commencement. The posting period may not be less than 7 calendar days, except for extraordinary circumstances. The employer shall take reasonable precautions to ensure that posted notices are not altered, covered, defaced or removed before the completion of the posting period and shall notify the executive director of satisfaction of the posting requirements.

§ 16. Posting of Notices at MLRB Offices and on Internet. Any notice prepared under this Chapter and distributed to an employer must also be posted on the official bulletin board of the Board and the Board's internet site.

§ 17. Petitions to Intervene. A petition to intervene in a previously requested unit determination proceeding, bargaining agent election or decertification election must meet the requirements set forth in this rule.

- 1. Form and Filing for Intervention.** A petition to intervene must conform to the requirements of Rule 7 of this Chapter, subsections 1 through 8.
- 2. Showing of Interest.** The petition must be accompanied by written evidence that at least 10 percent of the employees in the unit proposed in the petition which initiated the proceedings desire to be represented by the intervention petitioner for the purposes of collective bargaining. This showing of interest evidence must be filed with the Board only and is subject to the requirements of Rule 8 of this Chapter.
- 3. Time of Filing.** A petition to intervene in a unit determination proceeding, a bargaining agent election or a

decertification election must be filed no later than 10 calendar days after the date of posting of the Notice of Hearing or Notice of Election required by Rule 16 of this Chapter.

4. **Review of Petition.** The executive director shall administratively examine the petition to intervene and its supporting documents for compliance with the pertinent statutory and rule requirements and take appropriate action, which may include granting or dismissal of the petition.
5. **Notification to Parties.** If the petition is complete, the executive director shall transmit an official copy of the petition to the other parties within 24 hours with a letter indicating whether a response is required. If that transmission is made by electronic means, it must be followed by a copy sent by mail.
6. **Posting of Petition.** The Board shall post a true copy of each granted petition to intervene upon its official bulletin board in accordance with Rule 10 of this Chapter.
7. **Withdrawal of Initial Petition.** Withdrawal of the initial unit determination petition or election petition does not affect the processing of a timely-filed petition for intervention where the intervenor successfully supplements its showing of interest so as to constitute a 30 percent showing. The executive director shall specify a reasonable time period for such supplementation. Originally filed cards are considered current for the purposes of supplementation.

(§ 18 - § 20. Reserved.)

UNIT DETERMINATION AND UNIT CLARIFICATION HEARINGS AND APPEALS

- § 21. **Notice of Unit Hearing.** If necessary to resolve the dispute over the composition of the bargaining unit, whether arising from a unit determination petition or a unit clarification petition, the executive director may hold an evidentiary hearing. When a hearing is scheduled, a Notice of Hearing must be issued and distributed in accordance with Rule 14 of this Chapter. The Notice of Hearing and any amendments to it must be posted on the Board's official bulletin board and a copy mailed to any person or organization that has previously requested notice of all proceedings on the petition.
- § 22. **Criteria for Appropriate Bargaining Units.** In determining whether a particular position should be included in a unit or whether a proposed unit is appropriate, the hearing examiner is required to apply the specific provisions in the Act governing the employees in question.
 1. **Excluded Employees.** Persons who are excluded from the definition of employee under the applicable Act, that is, 26 M.R.S.A. §962(6), §979-A(6), §1022(11), §1282(5) or §1322(2), may not be included in a bargaining unit.
 2. **Units Established by Statute.** Bargaining units at the University of Maine System, the Maine Maritime Academy and the Maine state technical colleges must conform to the units established in 26 M.R.S.A. §1024-A to the extent required by that section.
 3. **Community of Interest.** In determining whether a community of interest among employees exists, the hearing examiner shall, at a minimum, consider the following factors: (1) similarity in the kind of work performed; (2) common supervision and determination of

labor relations policy; (3) similarity in the scale and manner of determining earnings; (4) similarity in employment benefits, hours of work and other terms and conditions of employment; (5) similarity in the qualifications, skills and training of employees; (6) frequency of contact or interchange among the employees; (7) geographic proximity; (8) history of collective bargaining; (9) desires of the affected employees; (10) extent of union organization; and (11) the employer's organizational structure.

- § 23. **Conduct of Hearing.** The executive director shall conduct the hearing, if a hearing is held. The executive director may order the consolidation of petitions for hearing. As hearing examiner, the executive director may require by subpoena the attendance and testimony of witnesses, the production of books, records and other evidence relevant to issues raised by a unit determination petition, a unit clarification petition, or responses to the petition. The hearing examiner may also require the submission of written statements of fact, position or law prior to hearing.
- § 24. **Nature of Hearing.** The purpose of the hearing is to develop a full and complete factual record. Each party bears the responsibility of producing evidence to support its contentions regarding the description of an appropriate unit or the proposed clarification. All testimony offered must be taken under oath or affirmation. Unless excused by the Board, the Board's Hearings Reporter shall record all hearings in representation matters. The transcript prepared by the Board's Hearings Reporter is the official transcript of the hearing.
- § 25. **Rules Regarding Evidence.** The strict rules of evidence observed by courts do not apply to representation hearings. The following rules regarding evidence apply:
1. **Evidence.** The hearing examiner shall admit evidence if it is the kind upon which reasonable persons are

accustomed to rely in the conduct of serious affairs. Irrelevant or unduly repetitive evidence may be excluded.

2. **Rules of Privilege.** The hearing examiner shall observe the rules of privilege recognized by law.
 3. **Written Evidence; Exception.** No sworn written evidence may be admitted unless the author is available for cross-examination or subject to subpoena, except for good cause shown.
- § 26. **Rights of Parties.** Any party to the hearing shall have the right to be represented by counsel or by other representative, to examine and cross-examine witnesses, and to offer documentary and other evidence. Stipulations may be offered with respect to any issue. Parties may request the issuance of subpoenas. The rules and procedures governing the issuance of subpoenas are set forth in Chapter 12, Rule 17. The hearing examiner shall allow oral argument upon request, and, after consultation with the parties, may require briefs to be submitted. Any brief permitted to be filed must be filed in the original and one copy. A copy of any brief filed with the Board must simultaneously be served on all parties to the matter.
- § 27. **Ex Parte Communications Prohibited.** No party or other person(s) legally interested in the outcome of a hearing may communicate *ex parte* either directly or indirectly with the hearing examiner assigned to the case, in connection with any issue of fact, law or procedure.
- § 28. **Report and Order.** The hearing examiner shall render a report and order within a reasonable time either dismissing the petition in whole or in part or clarifying the unit, determining requests for exclusionary designations, or determining an appropriate unit and directing an election, designating the organizations to appear on the ballot. If the report and order establishes a bargaining unit different from that proposed, the hearing examiner may require

the supplementation of the showing of interest forms prior to scheduling an election. The hearing examiner may also take other appropriate action.

§ 29. **Misconduct at a Hearing** - Misconduct at a unit hearing is subject to the sanctions provided in Chapter 12, Rule 24.

§ 30. **Appeal to Board.** Any party in interest aggrieved by any ruling or determination of the executive director regarding a representation matter may appeal that ruling or determination to the Board. The appeal must be made in writing and must be made within fifteen calendar days of the date of the ruling or determination. Objections to the conduct of an election by a Board agent must be made in accordance with Rule 54 of this Chapter.

1. **Nature of Appeal.** The appellate proceeding is not a hearing *de novo*. On appeal, the Board reviews the decision of the hearing examiner on the basis of the evidence presented to the examiner. An appealing party's request for a transcript of the proceedings before a hearing examiner must be made with the notice of appeal and in accordance with Chapter 10, Rule 9.
2. **Memorandum of Appeal.** Within twenty calendar days of the later of either the issuance of the hearing examiner's report and order or service of a requested transcript of the underlying representation proceedings, the appealing party shall file a memorandum of appeal stating, with specificity, all exceptions that it takes to the hearing examiner's findings of fact, conclusions of law or order. The memorandum must contain citations to the specific record evidence or transcript portions which support each of the exceptions. The memorandum of appeal filed with the Board must be filed in original and four copies and must simultaneously be served on all opposing parties.

3. **Notice of Hearing.** The hearing must be scheduled within a reasonable time from the filing of an appeal. The Board shall give at least seven days' notice of the time and place of such hearing to all parties in interest.
4. **Rights of Parties to the Hearing.** Any party to the appeal proceeding, as determined by the Board, has the right to be represented by counsel or by other representative for the purpose of offering oral argument requested by a party or written argument required by the Board. Stipulations may be offered with respect to any issue. The burden of proving material error on a given issue rests with the party appealing that issue. The Board shall allow oral argument and may require briefs to be submitted. Briefs must be filed in the original and four copies with the Board and a copy must be simultaneously served on all other parties.
5. **Ex Parte Communications Prohibited.** No party or other person legally interested in the outcome of the appeal may communicate *ex parte* either directly or indirectly with any Board member or assigned Board attorney in connection with any issue of fact, law or procedure.
6. **Powers of the Chair.** The Chair shall have all the powers set forth in Chapter 12, section 13 of these Rules.
7. **Decision and Order of the Board.** The Board shall issue its decision and order, in writing, pursuant to and consistent with its powers under 26 M.R.S.A. §§ 968, 979-G, 1028, 1288, or 1328. A decision and order must include findings of fact and conclusions of law and must either affirm or modify the ruling or determination of the hearing examiner and specify the reasons for that action. A copy of the decision must be mailed to all parties in interest or their representatives of record.

(§ 31 - § 40. Reserved.)

ELECTIONS OF BARGAINING AGENT AND DECERTIFICATION ELECTIONS

- § 41. Election Procedures Same.** The election procedures established by this chapter apply to all representation elections conducted by the Board. Decertification election procedures and requirements are the same regardless of whether the bargaining agent facing challenge was certified by the Board or attained its status through voluntary recognition. Questions of representation raised by an election petition and a decertification petition for the same bargaining unit must be resolved in one election.
- § 42. Form of Elections.** The executive director shall conduct all elections by secret ballot, at times and places and in such manner as the executive director may direct. When determining the method of voting and the selection of polling sites, the executive director shall consider the total number of eligible voters, the nature and geographic location of the work station(s) of eligible voters, the number of eligible voters at each work station, and the expressed desire of the parties, if any. The executive director may require the parties to attend a pre-election conference or participate in a telephone conference call to give relevant information upon which to base a decision regarding the date, time, place and manner of the election or to ascertain the identity of eligible voters. The determination of all disputed questions by the executive director regarding the date, time, place and manner of the election may be appealed to the Board within 5 working days of that ruling or determination, in accordance with Rule 54 of this Chapter.
- § 43. Voter Eligibility.** The employees eligible to vote are those who were employed on the last pay date prior to the filing of the petition, who are employed on the date of the election, and who meet the applicable requirements defining covered employees set forth in 26 M.R.S.A. §§ 962(6), 979-A(6), 1022(11), 1282(5), or

1322(2). Employees not working on election day because of illness, vacation, leave of absence or other reason are eligible to vote if they have a reasonable expectation of continued employment. If the period of time between the date of the filing of the petition and the date of the election exceeds six months, the employees eligible to vote are those otherwise eligible employees who have been employed at least six months and who are employed on the date of the election.

- § 44. Voter List.** At least 15 calendar days prior to the election or prior to the distribution of ballots for any election to be conducted by mail, the employer shall actually deliver to each labor organization that is a party to the proceeding and to any individual petitioner a list of the names and addresses of the employees in the unit who are employed at the time of the submission of the list and who are otherwise eligible to vote under Rule 43 of this Chapter. A copy of this voter list must also be simultaneously filed with the Board. If the period of time between the date of the filing of the petition and the date of the election exceeds six months, then the list must contain the names and addresses of otherwise eligible employees who have been employed at least six months and who are employed on the date of the election. In case of mail balloting, the Board may accept pre-addressed, gummed labels from the employer in satisfaction of this requirement. In large units, if the employer is not able to provide pre-addressed labels, the Board may demand the list of eligible voters up to twenty calendar days prior to the date of mail ballot distribution.
- § 45. Notice of Election.** At least fifteen calendar days prior to the election, or prior to the distribution of ballots for any election to be conducted by mail, the executive director shall prepare and distribute a Notice of Election. The Notice of Election must specify the classifications or categories of employees in the bargaining unit for which the election is to be conducted, rules concerning eligibility to vote, the choices presented to the voter, and a sample ballot. For a mail-ballot election, the notice must

indicate the date the ballots will be mailed or distributed to the prospective voters, the date and time the ballots will be counted, and the latest date and time by which the completed ballots must be received at the offices of the Board in order to be counted. For an on-site election, the notice must specify the date(s) and polling place(s) for the election and the hours the polls will be open. The notice may contain additional information and instructions as the executive director may consider appropriate.

§ 46. Posting of Notice of Election. Copies of the Notice of Election and the sample ballot must be sent to all employee organizations appearing on the ballot and to the employer. A copy of the Notice of Election and the sample ballot must be posted at the offices of the Board at least fifteen calendar days prior to the election. The employer shall post the Notice of Election and the sample ballot provided by the Board for at least ten calendar days prior to the election or the distribution of mail ballots. Supplemental or amended Notices of Election and sample ballots must be posted by the employer upon receipt. The employer shall post the notices and sample ballots at all work locations where notices are customarily posted for the benefit of employees in the sought-after bargaining unit. This posting requirement may be modified by mutual written agreement of all parties filed with and approved by the executive director. The executive director may tailor the posting requirements in such a way as to provide adequate notice to employees. The employer shall take reasonable precautions to ensure that the notices and sample ballots are not altered, covered, defaced or removed before the completion of the election.

§ 47. Ballot Format. The executive director shall prepare and distribute official ballots. Ballots must contain the name of each representative and the choice of "no representative." The incumbent bargaining agent, if any, will automatically appear on the ballot as the first alternative. The order of appearance on the ballot of other alternatives is determined by the chronological order of filing or appearance in the records of the Board. In a runoff election, the order of appearance on the ballot is

determined by the order of appearance on the ballot at the prior inconclusive election. The format of the official ballot is the same whether the election is conducted on site or by mail.

§ 48. Conduct of Election. The voting procedures used in a Board-conducted election must maintain the anonymity of the ballots to the greatest extent possible. The procedures established by this section must be followed unless the parties otherwise agree and obtain the consent of the executive director.

1. Mail Ballot Election Procedure. On the date scheduled for mailing ballots, the executive director shall mail to each eligible voter an official ballot, a "Secret Ballot Envelope," a "Mail Ballot Envelope" and voting instructions. The instructions must tell the voter to return the ballot to the Board in the two envelopes as follows: the voted ballot must be placed in the smaller envelope marked "Secret Ballot Envelope" and having any additional instructions considered necessary by the executive director. The second and larger envelope is the "Mail Envelope" in which the "Secret Ballot Envelope" is placed and mailed or delivered to the Board. The "Mail Envelope" must be pre-addressed and postage paid and must have a space on it that identifies the voter by name and employer and/or contains any additional identifying marks the executive director considers necessary. Voter failure to comply with the identity requirements on the "Mail Envelope" or destruction of any identifying mark on it is sufficient cause to disqualify that ballot from being counted. At the time designated for counting the ballots, each "Mail Envelope" must be authenticated by comparison with the list of eligible voters. "Secret Ballot Envelopes" must then be removed from the "Mail Envelopes" and deposited in a suitable container along with other "Secret Ballot Envelopes" to preserve the anonymity of the ballots. The "Secret Ballot Envelopes" must then be opened, the ballots removed and counted at

random, and the results recorded and witnessed as provided in subsection 3. All challenges to mail ballots which are based on or concern the identity of the voter or voter eligibility, and which are made pursuant to Rule 50 of this Chapter, must be raised prior to the removal of the "Secret Ballot Envelope" from the "Mail Envelope."

2. **On-Site Election Procedure.** The executive director shall designate the boundaries of the polling area(s) in the Notice of Election but may modify the boundaries of the polling area(s) at the election site. No electioneering of any kind is allowed within such area or areas. Any violation of this rule by any party or its representative or agent may be grounds for setting aside an election outcome favorable to the offending party. If it is necessary to conduct the election at more than one location, the ballots from each election location must be sequestered by the executive director until counted. These ballots must be sealed in an envelope or other appropriate container and delivered to the location where the ballots will be counted. The ballot count must occur at the time and place previously determined and announced by the executive director. If the election is conducted at only one election site, the ballots may be counted and the results certified promptly after the polls are closed.
3. **Election Observers.** Each party to the election may be represented by one observer at each polling place. A party so represented may designate that observer, and in the case of multiple sites, one of its observers, as its agent or representative for the purpose of observing the count of the ballots and for certifying, on a form to be supplied by the Board, the accuracy of that count. In an election conducted by mail balloting, the parties may each designate an election observer to be present at the counting of the mail ballots cast in the election. Except in

the case of mail balloting, Employer observers must be persons without supervisory authority over the employees who are voting, and must not be eligible voters.

4. **Destruction of Ballots.** Ballots may be destroyed six months after the election.
- § 49. **Elections in School Units During Summer.** If an election in a school bargaining unit composed primarily of persons employed during the school year only is scheduled to occur during the summer break, the election may be delayed until the reopening of the school at the discretion of the executive director.
- § 50. **Challenged Ballots.** Any prospective voter may be challenged for cause. A challenged voter must be permitted to vote in the following manner: The ballot must be sealed by the challenged voter in an envelope marked only "Secret Ballot." That "Secret Ballot Envelope" must be sealed by the challenged voter in a separate "Challenged Ballot Envelope" on which the voter is identified and the cause of challenge disclosed. The employee shall then report to the Board election agent conducting the election, and must then be allowed to put the "Challenged Ballot Envelope" into the container with the regularly cast ballots. In a mail ballot election, the Board agent shall write on the outer mail envelope the cause of the challenge and set the challenged ballot aside. If the challenged ballots are insufficient in number to affect the result of the election, no determination with respect to them may be made. If the challenged ballots are sufficient in number to affect the result of the election, the executive director shall resolve the challenge. If the executive director concludes that a hearing is necessary to resolve the challenge, the hearing procedures provided in sections 21 to 30 apply.
- § 51. **Void Ballots.** Ballots that have been mutilated, spoiled, marked with more than one choice, or which do not clearly reveal the intent of the voter as well as mail ballots that are returned without the voter's signature or other required identifying mark on the

mail envelope may be determined to be "void ballots" by the executive director. A void ballot may not be counted as favoring any alternative proposition appearing on the ballot. The executive director shall liberally view ballots in favor of validity.

- § 52. **Appeal on Challenged or Voided Ballots.** The decision of the executive director concerning challenged or void ballots may be appealed to the Board within five working days of the announcement of the ruling or determination. The appeals procedure before the Board shall in all other respects conform to Rule 30 of this Chapter. The Board's decision on review of challenged or void ballots may affirm, vacate, hold in abeyance or modify any previous certification issued as a result of the election.
- § 53. **Report of Election and Certification of Representative.** Upon the conclusion of any election, the executive director shall prepare a report of the result of the election and serve this report upon the parties. When an organization receives the majority of valid votes cast, the executive director shall certify it as the bargaining agent and include this certification with the report of election. If in a decertification election the incumbent bargaining agent obtains a majority of the valid votes cast, the executive director shall recertify it as the bargaining agent, whereupon the statutory one-year bar referred to in Rule 6 of this Chapter applies.
- § 54. **Objections to Conduct of Board Agent.** Within five working days after the election results are reported by the executive director, any party who intends to object to any action of the executive director in conducting an election shall file written objection with the Board and shall serve a copy of the objection(s) upon all other parties to the election. The objection(s) must contain a plain statement of the grounds of the objection. The Board shall hear the matter in accordance with Rule 30 of this Chapter, make its determination with respect to the objections and shall then affirm, vacate, hold in abeyance or modify the certification of the Board's designee, or of the executive director,

or take such other action as it may deem appropriate. Any defect in making an objection may warrant dismissal by the Board.

- § 55. **Objection to Conduct of Party.** Any objection to the conduct of a party to an election must be by a prohibited practice complaint filed in accordance with 26 M.R.S.A. §§ 968, 979-H, 1029, 1289, or 1329, as appropriate, and in conformity with Chapter 12 of these rules. Activities of a party to an election which materially compromise the secret ballot process, effectively disenfranchise eligible voters, or otherwise interfere with a free and fair election are grounds for such an objection.
- § 56. **Requirement of Majority.** In all elections a majority of the valid votes cast determine the outcome of the election. In initial or runoff elections where the ballot affords only the alternatives of one bargaining representative and "no representative," a tie in the tally of votes cast results in no representative.
- § 57. **Runoff Election.** The executive director shall conduct a runoff election when an election in which the ballot provided for three or more choices ultimately results in no choice receiving a majority of the valid ballots cast. A runoff election may not be held until any objections filed have been resolved by the Board.
1. **Eligibility of Voters in Runoff Election.** Only employees who were eligible to vote in the initial election and who remain in the bargaining unit on the date of the runoff election are eligible to vote in the runoff election.
 2. **Ballot Format in Runoff Election.** The ballot in the runoff election must provide for selection between the choices receiving the largest and second largest number(s) of valid votes in the initial election. The order of appearance of the choices on the rerun ballot are based on the order of appearance in the initial election.

§ 58. Cancelled Elections; Reruns. If a scheduled election is cancelled at the request of the petitioner, the petitioner is barred for a period of one year from participating in an election in that or a similar unit of those employees. When an election is rescheduled or rerun due to a party's prohibited practices, that party may be ordered to pay the costs occasioned by the rescheduled or rerun election.

(§ 59 - § 60. Reserved.)

MERGER OF BARGAINING UNITS

§ 61. Unit merger. Bargaining units subject to the Municipal Public Employees Labor Relations Law may be merged in accordance with 26 M.R.S.A. §966(4) and these rules. If the same certified or currently recognized bargaining agent represents multiple bargaining units with the same public employer, either the employer or the bargaining agent may file a request to merge those bargaining units with the executive director.

- 1. When Parties Agree on Merger.** When the certified or recognized bargaining agent and the public employer agree to merge two or more bargaining units into one, they shall sign an agreement to that effect and submit it to the Board. The standard Agreement on Appropriate Unit Form may be used for this purpose, indicating that the purpose of the agreement is to merge the units. The Board will prepare a Notice to Employees describing the agreement to merge units and giving the affected employees a reasonable period in which to object. If an objection is received by the Board from an employee in any of the affected units, a merger election will be conducted in accordance with subsection 2.
- 2. Merger Election Requested.** When a petition for merger election is filed or when an employee objects to a merger agreed upon by the parties, the executive director shall order a merger election. The election will determine whether a majority of the employees voting in each bargaining unit wish to be within the expanded unit. The only question on the ballot in a merger election is approval or disapproval of the proposed merger. The executive director shall certify the bargaining agent for an expanded unit consisting of any bargaining units in which a majority of the employees voting approved the merger.

The election procedures must otherwise conform with sections 41 to 58.

3. **Decertification Elections Take Precedence.** If a petition has been filed by a competing organization for decertification of the current bargaining agent for any of the bargaining units subject to the merger, then the decertification petition takes precedence over a petition to merge bargaining units.
4. **Frequency.** Unsuccessful petitioners may not renew their merger requests within one year of the date of the filing of an unsuccessful petition.
5. **Supervisors and Teachers.** A bargaining unit composed of a majority of supervisors may not merge under this rule with any other unit nor may a bargaining unit of teachers merge with a bargaining unit of nonprofessional employees. In such cases, a unit determination petition is necessary.

(§ 62 - § 70. Reserved.)

UPDATING RECORDS AT BOARD OFFICES

- § 71. **Notification of Contract Expiration.** When a party notifies the executive director of the pending expiration of a contract as required by the applicable statute, that notice will be used as evidence of continued activity of the unit for purposes of Rule 82 of this Chapter.
- § 72. **Copies of Collective Bargaining Agreements.** If a valid collective bargaining agreement is supplied to the Board, it will be used to update the Board's records to reflect changes in the name of the previously certified or recognized bargaining agent, in the composition of the bargaining unit, and as evidence of continued activity of the unit for the purposes of Rule 82 of this Chapter.

No notice to employees of the changes will be posted. As space limitations require, the Board may elect to retain only those portions of the collective bargaining agreement it considers necessary.

(§ 73 - § 80. Reserved.)

REVOCATION OF BARGAINING AGENT CERTIFICATION

- § 81. **Disclaimer of Interest.** A certified or recognized bargaining agent may disclaim interest in representing a bargaining unit in accordance with this rule.

1. **Contents of Request.** A certified or recognized bargaining agent wishing to disclaim interest in representing a bargaining unit must file a written request with the executive director. The request must include an assertion by the bargaining agent that no collective bargaining agreement covering bargaining unit members is in effect and that the bargaining agent has no outstanding financial obligations related to election costs, grievance/arbitration or impasse resolution proceedings.
2. **Posting of Disclaimer Notice.** If there is no collective bargaining agreement in effect and the bargaining agent asserts that there are no outstanding financial obligations, the executive director will prepare a Notice of Disclaimer for posting by the employer or for distribution directly to the affected employees. If there is a collective bargaining agreement in effect, the Notice of Disclaimer will not be distributed until the contract has expired. The Board may require the disclaiming union to provide the Board with the mailing addresses of all unit members to enable the Board to distribute notices of the petition for disclaimer.
3. **Objection to Disclaimer.** The petition to disclaim must be denied upon the objection of any interested party. An

objection must be received within 15 calendar days of the issuance of the Notice.

4. **Consideration of Objection.** After receipt of an objection to a petition to disclaim, the Executive Director shall consider the nature of the objection and take appropriate action. This action may include formal or informal mechanisms to resolve the dispute, granting or denying the petition to disclaim, or scheduling a decertification election. The decision of the Executive Director may be appealed to the Board in accordance with Rule 30 of this Chapter.
5. **Effect of Disclaimer.** Upon approval of a request to disclaim interest, the executive director shall revoke certification or recognition. The petitioner is not allowed to file, or intervene in, a petition to represent employees in the disclaimed bargaining unit for a one year period following the date of the order revoking certification or recognition.

§ 82. **Revocation of Certification in Inactive Unit.** The executive director may revoke the certification of a bargaining agent that has been inactive for five or more years if there is no evidence of any activity in the Board's records and no evidence of activity is received by the Board following the notice requirements of this rule.

1. **Inactive Bargaining Unit.** If the Board's records indicate that a certified or recognized bargaining agent has been inactive for a period of five or more years, the Board may solicit information from the parties on the continued existence of a collective bargaining relationship in that bargaining unit. The Board may request a copy of any document demonstrating that a collective bargaining relationship exists or existed during the previous five years or that the bargaining agent submitted a written

request to meet and negotiate during that same time period. If any evidence is presented that indicates that the bargaining agent has been active during the previous five years, the Board may not revoke certification under this section. Evidence should be liberally viewed in favor of continued certification.

2. **Posting of Notice.** If the Board is not able to find any evidence that the bargaining agent has been active in the past five years by contacting the employer, the bargaining agent of record, or any likely successors, the Board must issue a Notice to Employees concerning the potential revocation of bargaining agent certification before any action may be taken. The notice must state the name of the certified or recognized bargaining agent, the nature and date of the most recent collective bargaining activity known to the Board, and the time period during which objections to the Board revocation of certification must be filed. This posting period must be at least 15 calendar days and, for school units, may not include school vacation periods.
3. **Objections.** Any party objecting to the Board revocation of certification must contact the Board within the time period specified in the notice and provide evidence in support of its position within a reasonable time thereafter. The collective bargaining activity serving as the basis of the objection must have occurred prior to the date of the Notice issued by the Board.
4. **Notice to Other Parties.** Any Notice of Revocation of Certification distributed will also be sent to any person or organization that has previously notified the Board of its desire to receive such notices.

NOTE: Many of the provisions of this chapter had been part of Chapters 1, 2 and 3 of the MLRB Rules, which were repealed on the same day this chapter became effective.

CHAPTER 12. PROHIBITED PRACTICE COMPLAINTS; INTERPRETIVE RULINGS

SUMMARY: This chapter contains rules on filing prohibited practice complaints, responding to a complaint, the prehearing conference, the adjudicatory hearing and the issuance of decisions and orders by the Board. This chapter also contains rules on requests for interpretive rulings from the Board.

PROHIBITED PRACTICE COMPLAINTS

- § 1. Nature of a Prohibited Practice Complaint.** The filing of a prohibited practice complaint with the Board is a request that the Board adjudicate whether the named party has violated the applicable collective bargaining law as charged in the complaint, and, if so, that the Board provide an appropriate remedy.
- § 2. Who May File a Complaint.** Any employer, employee, employee organization or bargaining agent that believes that any employer, employee, employee organization or bargaining agent has engaged in or is engaging in a prohibited act or practice as defined in 26 M.R.S.A. §§ 964, 979-C, 1027, 1284, or 1324 may file a complaint with the Board.
- § 3. Time Limit for Filing a Complaint.** No complaint may be filed that is based upon any alleged prohibited practice occurring more than six months prior to the filing of the complaint with the Board. The complaint must be served on the party charged prior to being filed with the Board.
- § 4. Complaint is a Formal Request.** The complaint is a formal request for relief and, as such, the complaining party must have grounds to support its complaint. The complaint must be submitted in writing in the original and one copy, must be signed before a notary public, and must contain a declaration by the

person signing, under penalty of perjury, that its contents are true and correct to the best of the declarant's information and belief.

§ 5. Contents of Complaint. The complaint must contain, insofar as is known, the information specified in this rule. This information may be furnished on a form provided by the Board. The complainant is required to file the original and one copy of the complaint. The complainant will be required to supply an additional 3 copies of the complaint and the collective bargaining agreement after the prehearing conference. The required information is:

1. **Name of Complainant.** The full name, address, and affiliation, if any, of the complaining party, and the title of any representative filing a complaint.
2. **Name of Respondent.** The full name and address of the employer, employee(s) or employee organization(s) against whom the complaint is made.
3. **Copy of Collective Bargaining Agreement.** A copy of any existing bargaining contract or agreement relating to the unit involved in the prohibited practice complaint. A copy of the contract must accompany the original and each copy of the complaint.
4. **Concise Statement of Facts.** A clear and concise statement of the facts constituting the complaint, including the date and place of occurrence of each particular act alleged, names of persons who allegedly participated in or witnessed the act, and the sections, including subsection(s), of the labor relations statutes alleged to have been violated. The complaint must consist of separate numbered paragraphs with each paragraph setting out a separate factual allegation.

5. **Relief Sought.** A statement of the relief the complaining party seeks. This claim for relief does not limit the powers of the Board.

6. **Other Relevant Information.** A brief statement of any other information relative to the charge.

§ 6. Delivery of Complaint to Other Party; Proof of Service. A prohibited practice complaint is not considered filed with the Board until the complaining party has delivered a copy of the complaint upon the party against whom the charge is made. The executive director may at any time require the complainant to file proof of the date that the complaint was delivered on the respondent if proof of service is not filed with the complaint. Failure to provide the proof of service as required by the executive director is grounds for dismissal of the complaint. Proof of service may be in the form of either a certified mail receipt signed by the recipient addressee or an agent of the addressee, a signed and dated acknowledgment of receipt by hand delivery, a dated confirmation of delivery from the Post Office or other delivery service, or a dated statement of refusal of service. These requirements also apply to amended complaints.

§ 7. Docket Number. The Board shall notify the parties of the receipt of the complaint and the docket number assigned. The parties must include the docket number on all documents and subsequent correspondence concerning the complaint.

§ 8. Review, Amendment and Action on Complaint. After giving the respondent the opportunity to be heard on the sufficiency of the complaint, the executive director shall review the complaint for sufficiency and proceed in accordance with this rule.

1. **Action Following Review for Sufficiency.** Upon reviewing the complaint for sufficiency, the executive director shall take appropriate action, which may include the issuance of a notice of a prehearing conference or an evidentiary hearing, summary dismissal of the complaint

in whole or in part, entry of an uncontested order, or issuance of a recommended order by the executive director. The executive director may also issue a notice of errors and insufficiencies to the complainant and allow amendment of the complaint.

2. **Permitted Amendments.** A party may amend its complaint once as a matter of course at any time before a responsive pleading is served. Amendments made in response to a notice from the executive director of errors and insufficiencies must be filed within fifteen calendar days of service of the notice. Amendments must be delivered to all other parties in accordance with Rule 6 of this Chapter. When the claim asserted in an amended complaint arises out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading, the permitted amendment relates back to the date of the original pleading.
3. **Dismissal, Appeal.** If, after the opportunity for amendment has expired, the allegations in the complaint do not constitute a prima facie violation of the applicable prohibited act provision(s), the complaint may be summarily dismissed in whole or in part by the executive director who shall notify the parties of the determination. A party whose complaint is summarily dismissed in whole or in part may appeal to the Board, within fifteen calendar days after the issuance of the dismissal, by filing a motion requesting review of the dismissal. The motion must clearly and concisely set forth the points of fact and law claimed to be sufficient to establish a prima facie violation of the applicable prohibited act provision(s). Upon the filing of a timely motion for review, the Board shall examine the complaint as it existed when summarily dismissed in light of the assertions contained in the motion. If upon such examination the Board finds the complaint insufficient, it shall affirm the summary dismissal of the charge and shall notify the parties in

writing of the determination. If the Board finds the complaint to be sufficient, it shall reinstate the complaint and shall so notify the parties.

- § 9. **Response to Complaint.** The party against whom a complaint has been filed shall file the original and one copy of its response to a complaint within 20 calendar days after the filing of the original complaint, or 10 calendar days after the filing of the amended complaint, whichever is later. The respondent shall simultaneously serve a copy of the response upon the complaining party and certify that service was made in accordance with Chapter 10, § 8 of these Rules. The respondent will be required to supply an additional 3 copies of the response after the prehearing conference.
1. **Contents of Response.** The response must include a specific admission, denial, or explanation of each allegation in the complaint and must fairly meet the substance of the allegations denied. The response must be signed by the respondent. Any material allegation not denied in the response is deemed admitted. Any request for deferral of issues raised to the parties' grievance/arbitration procedure must be made in the response. A joint statement of any matters of agreement reached by the parties must be attached to the response.
 2. **Counter Complaint.** If the response contains a counter complaint, that counter complaint will be reviewed in accordance with section 7, and, if it alleges a prima facie violation of the applicable prohibited act provision(s), a response to that counter complaint will be required. A counter complaint is treated like an initial complaint, in all respects.
 3. **Failure to Respond.** Failure to file a timely response constitutes an admission of the properly pleaded material facts alleged in the complaint. Failure to file a response is grounds for the Board to render a default order against

the respondent unless the Board finds that the respondent's failure to answer is the result of excusable neglect. The default is with prejudice, unless the order provides otherwise.

§ 10. Prehearing Conference; Notice and Procedure. The executive director may require attendance at a prehearing conference by the parties or their representatives. The purpose of a prehearing conference is to prepare for an orderly hearing, to narrow the issues to be resolved at hearing and to explore opportunities for settlement.

1. **Notice.** The executive director shall serve notice of the prehearing conference on the parties by registered or certified mail with return receipt requested. The notice must include the time, date, and place of the conference or hearing.
2. **Required Information.** The notice of prehearing conference may require the parties to provide either at the prehearing conference or up to one week prior to the date of the prehearing conference: a written statement of relevant issues of fact and law, an estimate of the time required for hearing, proposed stipulations and admissions, exhibits and a list of the names and addresses of witnesses intended to be offered at hearing, a concise description of the settlement posture of the case without reference to the specific figures involved in prior discussions or negotiations, oral argument on any request for deferral, or any other information which in the opinion of the prehearing officer may aid in resolution or narrowing of the disputed issues remaining for hearing.
3. **Documentary Evidence.** The prehearing officer shall mark and admit all documentary evidence on which the parties agree. Disputed documentary evidence must be marked for identification and the basis of any objection noted by the prehearing officer. The Board shall rule on the admissibility of documentary evidence upon motion

by the offering party at the evidentiary hearing. Documentary evidence offered under this rule must be submitted in five copies. Only documentary evidence which was not available to the party offering it at the time of the prehearing conference or which was not known to exist at that time may be considered for admission by the Board at the time of hearing.

4. **Witness List.** The prehearing officer shall make a witness list. Any change in the list of prospective witnesses must be communicated by each party to the other(s) and to the Board at least forty-eight hours before the evidentiary hearing.
5. **Collective Bargaining Agreement.** In any case where the complaint refers to a collective bargaining agreement, that agreement must be treated as an exhibit admitted in evidence unless objection is seasonably noted.
6. **Deferral to Arbitration.** The prehearing officer shall cause a record to be made of argument concerning any request for deferral to arbitration and shall grant or deny the deferral request. If any party requests Board review of the prehearing officer's deferral decision the prehearing officer must refer the record to the Board. The Board may confer telephonically to determine whether to grant the motion to defer.
7. **Dispositive Legal Issue.** If it appears to the prehearing officer that the determination of a legal issue will resolve the dispute and render a fact hearing unnecessary, the prehearing officer may order a severance and fix a briefing schedule to enable the Board to first determine the legal issue. If the date for a fact hearing has already been set by the executive director, the prehearing officer may order that the hearing be rescheduled.

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8. **Settlement.** The prehearing officer shall explore the settlement negotiations conducted by the parties and shall encourage a fair disposition of the case by settlement. The representatives of the parties shall make every reasonable effort to attend the prehearing conference with full authorization from their clients with respect to settlement.
9. **Failure to Participate is Grounds for Dismissal or Default.** Failure of a complainant to attend a prehearing conference, to satisfy the requirements of the prehearing notice, or to file a brief required by the prehearing officer may be grounds for dismissal of the complaint. Failure of a respondent to attend a prehearing conference, to satisfy the requirements of the prehearing notice, or to file a brief required by the prehearing officer may be grounds for the entry of a default order against the respondent. The dismissal or default is with prejudice unless otherwise stated in the order of dismissal or default, and is final unless the Board finds that the failure to participate in the conference or hearing or to satisfy the requirements of the prehearing notice was the result of excusable neglect.
10. **Prehearing Memorandum and Order.** At the conclusion of the prehearing conference the prehearing officer shall issue a prehearing memorandum and order in which the fact issues for hearing are identified and amendments to pleadings agreed upon by the parties are recorded. The prehearing officer may order the parties to file legal memoranda or hearing briefs in advance of the hearing. Submission of such briefs is subject to the requirements of Rule 18 of this Chapter. The prehearing memorandum and order must indicate if additional copies of the complaint and the applicable collective bargaining agreement must be submitted prior to the hearing.

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- § 11. **Right to Intervene.** In the discretion of the Board, any other person or organization may be allowed to present testimony at the hearing or, upon motion, to intervene and participate as a full or limited party to the proceeding.
- § 12. **Notice of Hearing.** When an evidentiary hearing is scheduled, notice of the hearing must be served on the parties by registered or certified mail with return receipt requested. The Notice of Hearing and any amendments to it must be posted on the Board's official bulletin board and on the Board's internet site.
- § 13. **Conduct of Hearing; Powers of Chair.** The Chair has the power to administer oaths and to require by subpoena the attendance and testimony of witnesses, the presentation of books, records and other evidence relative or pertinent to the issues presented to the Board for determination. Witnesses subpoenaed by the Board are entitled to the same fees as are paid to witnesses in the Superior Court. Any party may file a written application for subpoenas with the Board in accordance with Rule 17 of this Chapter. A person served with a subpoena issued by the Board may not refuse or neglect to appear or to testify or to produce books and papers relevant to the investigation, inquiry or hearing as commanded in that subpoena with the Board. Upon failure of any party to comply with a subpoena, the Board may, absent constitutional, statutory or other privilege, disregard all related evidence offered by that party.
- § 14. **Nature of Hearing.** The purpose of the hearing is to develop a full and complete factual record. The burden of proof rests with the complaining party. All testimony offered must be taken under oath or affirmation. Unless excused by the Board, the Board's Hearings Reporter shall record all hearings. The transcript prepared by the Board's Hearings Reporter is the official transcript of the hearing.
- § 15. **Rules Regarding Evidence.** The strict rules of evidence observed by courts do not apply to Board hearings. The following principles regarding evidence apply:

1. **Evidence.** The Board shall admit evidence if it is the kind upon which reasonable persons are accustomed to rely in the conduct of serious affairs. Irrelevant or unduly repetitive evidence may be excluded.
 2. **Rules of Privilege.** The Board shall observe the rules of privilege recognized by law.
 3. **Written Evidence; exception.** No sworn written evidence may be admitted unless the author is available for cross-examination or subject to subpoena, except for good cause shown.
 4. **Evidence Not Offered at Prehearing Conference.** If evidence is offered that was not offered at the prehearing conference, it is the responsibility of the offering party to establish why the proposed evidence was not available at the time of the prehearing conference. This limitation on the introduction of new evidence before the Board does not apply to evidence used for impeachment or rebuttal purposes. Other documentary evidence may be admitted by the Board, at its discretion, for the purpose of avoiding manifest injustice.
- § 16. **Rights of Parties.** Any party to the hearing has the right to be represented by counsel or by other representative, to examine and cross-examine witnesses, and to offer documentary and other evidence. Stipulations may be offered with respect to any issue. Parties may request the issuance of subpoenas. The Board shall allow oral argument upon request, and, after consultation with the parties, may require briefs to be submitted. Any brief permitted to be filed must be filed in the original and four copies. A copy of any brief filed with the Board must be simultaneously served on all parties to the matter. A party's representative may testify at the hearing but the Board may require the testimony to be in question and answer form.

- § 17. **Witnesses and Subpoenas.** A party to a proceeding before the Board or the executive director may request the attendance of witnesses voluntarily or by subpoena. If witnesses or documents are sought by subpoena, the requesting party must first make a written request of the Board or presiding official for the issuance of the subpoena. When the subpoena is issued, it is the responsibility of the requesting party to serve the subpoena or cause it to be served on the named individual. When a witness is subpoenaed, the witness fee and transportation allowance established by 16 M.R.S.A. §251 must be provided at the time the subpoena is served. If a party subpoenas a witness and then decides not to call that witness, the requesting party must give notice of its intent not to call that witness to the other parties to the proceeding and to the Board or the executive director at least forty-eight hours prior to the time the witness was scheduled to appear. A subpoena for documents will ordinarily require the production of the documents at the prehearing conference.
- § 18. **Submission of Briefs.** The Board may request any party to submit, at any time, a written statement of position, fact or law regarding any matter relevant to a pending prohibited practice complaint. Briefs requested or permitted by the presiding officer of an evidentiary hearing must be filed with the Board in the original and four copies on or before the date specified, and a copy must be simultaneously served on the other party or parties. A brief is considered to be filed with the Board on the date it is received by the Board. Failure of a complainant to file a brief required by the presiding officer of an evidentiary hearing may be grounds for dismissal of the complaint. The failure of a respondent to file a brief required by the presiding officer of an evidentiary hearing may be grounds for entry of a default order against the respondent. An order dismissing a complaint or entering a default order resulting from a party's failure to file a brief must be with prejudice unless provided otherwise in the order.
- § 19. **Ex Parte Communications Prohibited.** No party or other person(s) legally interested in the outcome of a hearing may

communicate *ex parte* either directly or indirectly with any Board member or assigned Board attorney in connection with any issue of fact, law or procedure related to a pending prohibited practice complaint.

§ 20. Amendments to Conform. If evidence is objected to at the hearing on the ground that it is not within the issues set out in the pleadings, the Board may allow the pleadings to be amended and shall do so freely when it will aid in the presentation of the merits of the action and the objecting party fails to satisfy the Board that the admission of that evidence would prejudice it in maintaining its action or defense upon the merits. The Board may grant a continuance to enable the objecting party to meet that evidence. Upon the request of a party at the conclusion of the hearing, the complaint or response may be specifically amended to conform to the evidence.

§ 21. Withdrawal. The complaint may be withdrawn by the complaining party with the approval of the Board. If the withdrawal is without the approval of the other party, the withdrawal must be with prejudice. No proposed withdrawal, based upon the settlement of a complaint within the Board's jurisdiction which contains allegation(s) of unlawful discrimination against any individual, may be approved by the Board without notice to the discriminatee. Unlawful discrimination within the meaning of this rule includes discrimination in hire, term of employment or any term or condition of employment on the basis of lawful organizational or collective bargaining activity or affiliation. Unlawful discrimination also includes discrimination based on the signing or filing of any affidavit, petition or complaint, or the giving of any information or testimony under the labor relations statutes. The notice by the Board must state the terms of the proposed settlement, apprise the discriminatee of the opportunity to refrain from joining in the settlement, extend the opportunity to assume party status concerning charges of discrimination addressed by the settlement in which the discriminatee does not join, and set a reasonable deadline for the filing of notice of intention regarding

the proposed settlement. A comparable notice provided by the complainant and signed by the individual discriminatee may be approved by the Board when appropriate.

§ 22. Stay of Election. The holding of an election and/or the issuance of a certification based upon the results of a previously conducted election may be stayed or set aside by the Board, pending the decision of a prohibited practice complaint relating to the unit petitioned for or relating to alleged irregularities in the selection or decertification of a bargaining agent.

§ 23. Shortening Time Limits or Staying Further Processing. The Board may order accelerated action on a claim without regard to the time limits otherwise provided in these rules, or may order a stay of further processing of a claim on such terms as are appropriate.

§ 24. Misconduct at a Hearing; Refusal of Witness to Answer Questions. Misconduct at any hearing before the Board or the executive director is grounds for summary exclusion from the hearing by the presiding officer. If the misconduct is of an aggravated nature and is engaged in by a representative of a party, it may be cause for suspension by the Board, after due notice and hearing, from further practice before the Board. Absent constitutional, statutory or other privilege, the refusal of a witness to answer any question may be grounds for striking all testimony given by that witness on related matters.

§ 25. Stale Proceedings. The Board, on its own motion and in the absence of a showing of good cause to the contrary, may dismiss a proceeding for want of prosecution at any time more than one year after the last docket entry showing any action taken by the complainant/ petitioner other than a motion for continuance.

§ 26. Decision and Order of the Board. The Board shall issue its decision and order, in writing, pursuant to and consistent with its powers under 26 M.R.S.A. §§ 968, 979-H, 1029, 1289, or 1329.

(§ 27 - § 40. Reserved.)

INTERPRETIVE RULINGS

§ 41. Interpretive Rulings. An interpretive ruling is a means for determining specific questions as to the prospective rights, obligations, or liabilities of a party when controversy or doubt has arisen regarding the applicability of a specific statute, Board order or rule. A petition for an interpretive ruling may not be used to resolve factual disputes between adversaries and may not be used as a substitute for other remedies provided by the collective bargaining laws.

1. Petition for Interpretive Ruling. A petition for an interpretive ruling may be filed with the Board by any person, employee organization, or public employer. A petition for an interpretive ruling must be filed in the original and four copies. In order to show the existence of a controversy or doubt, the petitioning party must describe the potential effect upon that party's interests in its petition. The petition must contain the name and address of the petitioner; the statute, Board order, or Board rule on which the interpretive ruling is sought; a clear and concise statement of the facts and circumstances and the contemplated action of the petitioner which arguably might elicit the filing of a prohibited act complaint or to which the specified statute, Board order, or Board rules and procedures might be applicable; and a supporting memorandum of law. If negotiations are in progress and a controversy has arisen concerning the required scope of bargaining, the petition must include a brief description of the positions taken by the parties and copies of all proposals and counterproposals submitted by the parties relating to the dispute.

2. Service of Petition on Other Party. Where any other person, employee organization, or public employer is

named in the petition, the petitioner shall simultaneously serve a copy of the petition on the named person, employee organization, or public employer and provide a certificate of service to the Board.

- 3. Posting of Petition.** Upon receipt of a petition for an interpretive ruling, the Board shall post notice of the petition on its official bulletin board and internet site.
- 4. Hearing Permitted.** The Board, at its discretion, may grant a hearing before the Board or a designated agent.
- 5. Pending Actions Proceed.** The filing of a petition for an interpretive ruling does not stay the progress of any proceeding pending before the Board and does not relieve any party of any obligation set forth in the Maine Revised Statutes, any Board order, or these rules and procedures.
- 6. Written Memoranda.** Any person, employee organization, or public employer may file with the Board a written memorandum addressed to the issues raised by the petition within twenty calendar days after the date the notice of the petition is posted on the Board's official bulletin board. The memorandum must be submitted in the original and four copies and must include the caption of the case as posted by the Board. The memorandum must clearly and concisely set forth the position taken by that person, employee organization, or public employer, and the facts and arguments relied upon in support of that position.
- 7. Ruling Not Binding on Board.** An interpretive ruling is not binding upon the Board, provided that in any subsequent Board proceeding, any person's justifiable reliance upon the ruling must be considered in mitigation of any penalty sought to be assessed.

NOTE: Many of the provisions of this chapter had been part of Chapter 4 of the MLRB Rules, which was repealed on the same day this chapter became effective.

CHAPTER 13. RESOLUTION OF CONTRACT NEGOTIATION DISPUTES

SUMMARY: This chapter contains rules on requesting mediation, fact finding, and arbitration and rules governing certain aspects of those proceedings.

MEDIATION

- § 1. Who May Request Mediation and When.** Traditional mediation services may be requested by either the bargaining agent or the public employer at any time during the bargaining process prior to interest arbitration.
- § 2. Requests for Mediation Services.** A party requesting mediation assistance in negotiations for an initial or successor agreement shall provide the information specified in this rule to the Board. This information may be supplied on a form available from the Board.
- 1. Name and Address of Requesting Party.** The name of the person making the request and the name, address and telephone number of the requesting party's organization.
 - 2. Name and Address of Other Party.** The name of the contact person for the other party and the name, address and telephone number of the other party.
 - 3. Name of Bargaining Unit.** The name or a brief description of the bargaining unit involved.
 - 4. List of Issues.** A list of issues to be discussed in mediation.
 - 5. Type of Agreement or Date of Reopener.** Whether an initial or successor agreement or reopener is involved and

the date of termination of the latest contract or of the reopener, if applicable.

- § 3. **Preventive Mediation.** Preventive mediation is a non-confrontational, collaborative technique for negotiating a collective bargaining agreement in which the mediator is on the scene before the negotiations begin. If necessary, the mediator trains the parties in interest-based bargaining so that the parties can work together to identify their individual and mutual interests and engage in joint problem solving to find ways to best meet such interests.
1. **Requesting Preventive Mediation.** Preventive mediation is initiated by joint request of the parties, indicating in writing their intention to participate in the process.
 2. **If Preventive Mediation Does Not Result in an Agreement.** If preventive mediation does not result in an agreement, a new mediator will be assigned to assist the parties in traditional mediation upon the request of either party.
- § 4. **Costs.** The mediator's fee and necessary expenses must be shared equally by the parties. The mediator's fee is established by 26 M.R.S.A §965(2)(C). Upon receiving a request for mediation, the executive director may first bill the parties for the estimated costs of mediation services. Once one party has paid its share, the executive director shall appoint a mediator from the Panel of Mediators. The executive director shall bill or reimburse the parties for any difference between the estimated costs that were collected and the actual costs of providing the services.
- § 5. **Appointment of Mediators.** The executive director is responsible for appointing a member of the Panel of Mediators to assist the parties in resolving their dispute. The assigned mediator is responsible for scheduling all mediation sessions.

- § 6. **Confidentiality in Mediation.** Any information disclosed by either party to the dispute to the mediator in the performance of the duties of a mediator is privileged, as provided by 26 M.R.S.A. §965(2).

(§ 7 - § 20. **Reserved.**)

FACT FINDING

- § 21. **Who May Request Fact Finding.** Either party to a dispute may request the executive director to assign a fact-finding panel in accordance with these rules. When a request for fact finding is received, the executive director shall appoint a fact-finding panel, ordinarily of three members. In the case of judicial employees, if the parties agree to call upon the Board of Arbitration and Conciliation (BAC) for fact-finding services, they must file a joint request for fact finding in accordance with 26 M.R.S.A. § 1285(3) and with these rules.
- § 22. **Request to Waive Fact Finding.** Except in the case of judicial employees, if the parties agree not to follow the established fact-finding procedures, they shall jointly apply to the executive director to waive fact finding. The executive director may, in his or her discretion, concur with that agreement when substantial negotiating progress has been made prior to fact finding and the factual issues to be presented to an arbitrator or arbitration panel are reasonable and manageable in their number and difficulty.
- § 23. **Request for Fact Finding.** The filing party shall file the original and four copies of the request for fact finding with the executive director. The request may be submitted on a form supplied by the Board. The request must contain:
1. **Name of Requesting Party.** The name, address, business and residence telephone numbers of the

person(s) filing the request and, if different, the name, address, business and residence telephone numbers of the person responsible for making the presentation to the fact finders.

2. **Name of Representatives of Other Party.** The name, address, business and residence telephone numbers of the bargaining representative of the other party and, if different, the name, address, business and residence telephone numbers of the person who is expected to make the presentation to the fact finders on behalf of the other party, if known.
3. **Name of Bargaining Unit.** The name of the bargaining unit involved or the bargaining units involved, if the negotiations involve more than one bargaining unit.
4. **Type of Request.** A statement indicating whether the request is unilateral or joint. If it is a joint request, the request must include a statement indicating whether the request is a joint request for the services of the BAC as fact finders or seeks the appointment of private fact finders by the executive director.
5. **Issues in Controversy.** An appended statement indicating the unresolved issues in controversy marked "Issues in Controversy, Exhibit 1" in the original and four copies and signed by the requesting party, if the request is unilateral, or signed by the requesting party and the bargaining representative of the other party, if the request is joint.
6. **Alternative Times and Dates.** An indication of alternative times, dates and places suitable for the requested hearing and an indication of which, if any, are acceptable to both parties to the controversy.

7. **Signatures.** The place and date the request was made, the signature of each requesting individual and the capacity in which each individual is acting.

§ 24. **Copy of Request to Other Party.** Any party making a unilateral request for fact finding shall mail a copy of that request to the other party.

§ 25. **Qualification of Fact Finders.** No person may serve as a fact finder who is from the community involved in the dispute or who may have a conflict of interest arising from the circumstances of the controversy. However, if both parties waive this geographic restriction, the executive director may appoint fact finders who are residents of the community involved in the dispute.

§ 26. **Appointment of Fact Finders.** The executive director shall appoint a panel of fact finders in accordance with this rule, whether the request is a joint request for fact finders from the BAC or a request for private fact finders.

1. **Board of Arbitration and Conciliation (BAC).** When the executive director has received a joint request for fact-finding services from members of the BAC, the executive director may first bill the parties for the estimated costs in accordance with Rule 27 of this Chapter. Once one party has paid its share, the executive director shall appoint the fact-finding panel from the three categories of BAC members.
2. **Private Fact Finders.** When there is a request for private fact finders, the executive director shall appoint these fact finders by making reference to three lists of fact finders maintained by the Maine Labor Relations Board, marked "Management Representative Fact Finders," "Employee Representative Fact Finders," and "Neutral - Chair Fact Finders." Employees of public management associations or public employee associations, or

subcontractors thereof, are not eligible to serve as fact finders. The executive director shall submit the current list of employee fact finders to the bargaining agent and the current list of management fact finders to the public employer. After receipt of such lists, each party shall notify the executive director of the names, in order of preference, of no more than five persons from the list of fact finders which that party prefers to have appointed to the fact-finding panel. The executive director will make every effort to comply with the parties' wishes in appointing the employee and management representatives to the fact-finding panel, but is not required to do so. The executive director shall select one person from each of the lists provided by the parties to serve on the fact-finding panel and shall select one person from the "Neutral - Chair Fact Finders" list to be chair of the panel.

§ 27. Costs. The costs for services of the fact-finding panel must be shared equally by the parties to the controversy. Costs include per diem expenses and actual and necessary travel and subsistence expenses for the panel, the costs (if any) of hiring the premises where the hearing is conducted, and the costs and expenses incurred in the production and publication of the resulting report (including stenographic expenses). The billing process depends on whether the fact finders are members of the BAC or private fact finders.

1. Board of Arbitration and Conciliation (BAC) Fact Finders. When a request for fact finding services by members of the BAC is received, the executive director may estimate costs and collect those costs prior to providing the services. Per diem fees are established by statute in 26 M.R.S.A. §931. Once one party has paid its share of the estimated cost, the matter is scheduled for hearing. The executive director shall bill or reimburse the parties for any difference between the estimated costs that

were collected and the actual costs of providing the services.

2. Private Fact Finders. The parties are billed directly for the costs of services provided by private fact finders. The fees are set by the individual private fact finders.

§ 28. Notice of Hearing. Once the executive director has appointed fact finders and arranged for the hearing, the executive director shall notify all parties to the controversy and the fact finders of the time, place, and date for the hearing. This notification to the parties and to the fact finders must be sent at least ten working days prior to the date set for the hearing. This ten-day limitation may be modified for cause by the executive director.

§ 29. Cancellations. A unilateral cancellation of a fact-finding hearing is not permitted once the letter of appointment and notice of hearing has been sent by the executive director. Fact-finding proceedings may only be cancelled or postponed if both parties to the controversy jointly agree and so notify the executive director and the members of the fact-finding panel. If a private fact-finding hearing is cancelled by joint agreement of the parties after the letter of appointment and notice of hearing has been sent, the members of the private fact-finding panel are entitled to a minimum of one day's compensation and reimbursement for expenses incurred if the cancellation occurs within five calendar days of the date of the hearing. Payment of these costs to the private fact finders must be shared equally by the parties to the controversy.

§ 30. Submission of Briefs or Statements. Each party to the controversy shall submit a brief or statement on the unresolved issues in controversy to the other party, to each of the appointed members of the fact-finding panel, and to the executive director at least five working days prior to the date of hearing. This period may be modified by the executive director if less than 10 days' notice of the hearing is provided. This brief or statement may

contain statements, facts, precedents, or other pertinent evidence to support that party's position on the issues in question. All issues to be heard in oral argument must be set forth in this brief or statement. If the fact-finding proceeding is unilaterally invoked, the respondent (the non-invoking party) must include in its brief or statement any new issues it will raise at the fact-finding proceeding. The party requesting fact finding shall submit with its brief the most recent collective bargaining agreement, if any, between it and the respondent.

- § 31. **Conduct of Hearings.** A fact-finding hearing is not a public hearing. A fact-finding hearing may only be public if all the parties and all the fact finders agree to have it public.
- § 32. **Ex Parte Communications.** A party's representative may communicate with that side's partisan member of the fact-finding panel without violating any prohibition on *ex parte* communications. No party or other person(s) legally interested in the outcome of a hearing, however, may communicate *ex parte* either directly or indirectly with the panel's neutral chair.
- § 33. **Evidence.** The fact-finding panel shall base its findings of fact and recommendations upon reliable and credible evidence produced at the hearing, but the panel may not insist on adherence to the legal rules of evidence. The fact-finding panel may request statistical data and reports on its own initiative in addition to the data regularly maintained by the Department of Labor. The panel has the power to administer oaths and to require by subpoena the attendance and testimony of witnesses, the production of books, records and other evidence relative or pertinent to the issues presented to them.
- § 34. **Post-Hearing Briefs.** When requested by a majority of the fact-finding panel, post-hearing briefs must be submitted not more than ten calendar days after the termination of the fact-finding hearing.

§ 35. **Fact Finders Report.** It is the responsibility of the chair of the fact-finding panel to prepare and distribute a fact-finding report containing the fact finders' findings and recommendations.

1. **Distribution; Due Date.** The chair of the fact-finding panel shall submit a copy of the fact-finding report to each of the parties to the controversy and the original and one duplicate to the executive director not more than thirty calendar days after the termination of the hearing or after the panel's receipt of any post-hearing evidence and/or argument.
2. **Extension of Due Date.** The 30-day limit for the distribution of the fact-finding report may be extended by the Maine Labor Relations Board or executive director only in extenuating circumstances if the chair of the fact-finding panel initiates the request for an extension at least five calendar days before the expiration of the thirty-day period. The chair must confirm the request in writing and provide a copy to each party. The Board or executive director shall rule on the request, state whether or not the extension was granted, and, if so, the length of the extension, and send a copy of the ruling and the request to the chair of the fact-finding panel and to each of the parties to the controversy.

§ 36. **Contents of Report.** As a minimum, the report must contain:

1. **Heading.** A clear and concise heading making it readily apparent that the report results from a fact-finding hearing.
2. **Parties.** A clear and concise designation of each of the parties to the controversy.
3. **Panel Members.** The name and affiliation of each member of the fact-finding panel.
4. **Time of Hearing.** Time, date and place of the commencement and termination of the hearing(s).
5. **Party Representatives.** Names and capacities of persons appearing for and/or representing each side in the controversy.
6. **Procedures Used.** Statement of procedures followed prior to the fact-finding hearing.
7. **Recommendations and Issues Resolved by Agreement.** A detailed description of each unresolved issue submitted as an issue in controversy indicating the issue, the position of each party at the time of hearing, and the ultimate recommendation of the fact finders on that issue. Any issues resolved by mutual agreement prior to or at the hearing must also be noted. In the case of successor agreements, the applicable contract section(s) which are the subject of recommendations by the fact finders must be specifically identified by article and section number.
8. **Signatures.** Date, place, capacities, and signatures of the members of the fact-finding panel, and, in the absence of any member's signature, an indication of whether a minority report will be filed.

§ 37. **Minority Reports.** Minority reports may be submitted as a result of fact-finding hearings but must be prepared by the fact finder submitting the minority report. A minority report, if any, must be filed with each of the parties to the controversy, with the majority members of the fact-finding panel, and with the executive director not more than ten working days after the submission of the majority report. A minority report must be clearly marked "Minority Report," must contain the items specified in Rule 36 of this Chapter, subsections 1, 2, and 3, and must clearly state each issue on which the panel member is dissenting and must state the dissenting member's recommendations and reasons on an issue-by-issue basis.

§ 38. **Subsequent Action by the Parties.** The parties have a period of thirty calendar days after the receipt of findings and recommendations from the fact finders in which to make a good faith effort to resolve their controversy. If the parties have not resolved their controversy by the end of that period, either party may make the fact-finding recommendations public, but not until the end of that period unless the parties otherwise jointly agree.

(§ 39 - § 50. Reserved.)

ARBITRATION

§ 51. **Joint Request Required for Board of Arbitration and Conciliation (BAC).** All requests for arbitration services from members of the BAC must be a joint request from the parties to the dispute. In the case of interest arbitration, both parties must sign a letter or form requesting interest arbitration from the BAC. In grievance arbitration cases, if the applicable collective bargaining agreement includes an agreement to use the services of the BAC, the request filed need not be a joint request.

§ 52. **Costs.** When a joint request for arbitration services by members of the BAC is received, the executive director may estimate costs and collect those costs prior to providing the services. Per diem

fees are established by statute in 26 M.R.S.A. §931. Once one party has paid its share of the estimated cost, the matter is scheduled for hearing. The executive director shall bill or reimburse the parties for any difference between the estimated costs that were collected and the actual costs of providing the services.

§ 53. Other Arbitration Proceedings. If the parties do not agree to request the services of the BAC jointly, the procedures specified in the applicable collective bargaining statute for selecting an arbitrator or arbitration panel apply.

NOTE: Many of the provisions of this chapter had been part of Chapter 5 and 6 of the MLRB Rules, which were repealed on the same day this chapter became effective.